

(2011) 04 DEL CK 0301

In the Delhi High Court

Case No : Writ Petition (C) No. 1357 of 2011

Shamsher Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-04-2011

Acts Referred:

Citation : (2011) 179 DLT 343 : (2012) 2 SLJ 509

Hon'ble Judges : Dipak Misra, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : K.C. Mittal, U. Srivastava and Tarunesh Kumar, for the Appellant; Jatan Singh, for UOI, R.N. Singh and A.S. Singh for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—The Petitioner, a constable in the Central Industrial Security Force (CISF), was sent on deputation to the National Crime Research Bureau (NCRB) for a period of three years on 24.4.2006. By order dated 19.3.2007, he was repatriated to his parent department. Being dissatisfied by the said order of repatriation, he approached the Central Administrative Tribunal, Principal Bench (for short "the tribunal"), in O.A. No. 487/2007 wherein the tribunal, vide order dated 1.5.2007, directed to take the Petitioner back in service on deputation with a further direction that he should be allowed to continue up to his full tenure. The said order was challenged by the employer but without any success and, accordingly, the Petitioner continued to work in NCRB on deputation upto 23.4.2009. Thereafter, he submitted an application for absorption in NCRB on the ground of illness of his parents and his wife was living with him in Delhi. The NCRB entered into correspondence on 3.9.2009 with the CISF, the parent department of the Petitioner, seeking its no objection to the absorption of the Petitioner in NCRB. Eventually, the parent department gave its no objection on 17.11.2009 to the proposal of NCRB. Thereafter, a meeting of the Departmental Promotion Committee (DPC) was convened to consider the suitability of the

Petitioner for absorption under NCRB, the second Respondent herein. The DPC did not find the Petitioner suitable for absorption and, accordingly, made the recommendation which was accepted by the Director General of NCRB and ultimately, an order was passed on 21.4.2010 repatriating him to his parent department. The case of the Petitioner for absorption was rejected by the DPC on the ground that the Crime and Criminal Tracking Network and System Project (CCTNS Project) in which the Petitioner was working was going to be integrated with the Automated Fingerprint System and it would be appropriate to induct constables who had experience of fingerprint work for better professional management of the NCRB.

2. Being dissatisfied with the non-absorption, the Petitioner approached the tribunal vide O.A. No. 1313/2010 which was decided on 16.11.2010, wherein the tribunal has directed the Respondents to re-consider the repatriation of the Petitioner. In pursuance of the order passed by the tribunal, the second Respondent-NCRB considered the case of the Petitioner and passed an order to the effect that in view of the emerging future requirements in the context of Crime and Criminal Tracking Network and System (CCTNS) Project, the CFPB would require constables having experience of working in the State Finger Print Bureaus in the field of fingerprint or constables having experience of working in Finger Print Unit/Branch at the District level in the field of fingerprint and, hence, the Petitioner could not be accommodated against the post of constable in CFPB and could not be permanently absorbed.

3. Grieved by the aforesaid order, the Petitioner approached the tribunal in OA No. 4215/2010 contending, inter alia, that the Respondent No. 2 had misconstrued the direction of the tribunal in the earlier order dated 16.11.2010 and, hence, the order passed by the NCRB was absolutely flawed. It was urged that the nature of work had not been changed and the Petitioner, who was working in CCTNS Project, had performed extremely well which is reflectible from his recommendation for honorarium and, hence, there was no justification not to absorb him and the repatriation was founded on extraneous grounds. The said stand was opposed by the Respondents contending, inter alia, that the tribunal had issued a limited direction to the Respondents in O.A. No. 1313/2010 and regard being had to the directions given by the tribunal, the case of the Petitioner was considered by the NCRB which is reflectible from the reasons given by the Respondents. Be it noted, the file containing the reasons was produced before the tribunal. The tribunal, after perusal of the reasons and after referring to its earlier order, came to hold that the needs of the organization were paramount and, therefore, the Respondents were fully justified in deciding not to absorb the Petitioner in the organization as he would not meet the requirements of the technology used by them.

4. It is worth noting here that the Petitioner had filed a contempt petition forming the subject matter of CP No. 697/2010 before the tribunal which was also decided along with the Original Application. The tribunal did not find merit in

the Original Application as well as in the Contempt Petition holding that there was no violation of the order and, accordingly, did not proceed with the same.

5. We had heard Mr. K.C. Mittal, learned Counsel for the Petitioner, Mr. Jatan Singh, learned standing counsel for the Union of India and Mr. R.N. Singh, learned Counsel for the Respondent Nos. 2 and 3.

6. Questioning the legal tenability of the order passed by the tribunal, it was submitted by Mr. Mittal that when there was a policy decision to absorb the Petitioner, the Petitioner was entitled to be absorbed and the same could not have been denied by taking extraneous pleas which were absolutely arbitrary and unjustified but the tribunal did not address the issue from that angle and, hence, the order was vitiated. The learned Counsel would submit that absorption and non-absorption might be a matter of policy but the policy cannot be applied in an arbitrary, unjustified and unfettered manner, but must be founded on cogent and germane reasons. In the case at hand, the Respondent No. 2 initially entered into communication with the parent department of the Petitioner seeking his absorption as a permanent employee and thereafter found him unsuitable and, hence, the entire action smacks of arbitrariness making it vulnerable. Mr. Mittal, to buttress his submissions, has commended us to the decision in Rameshwar Prasad Vs. Managing Director U.P. Rajkiya Nirman Nigam Limited and Others,

7. Mr. Jatan Singh, learned standing counsel for the Union of India, supporting the order of the tribunal, contended that the need of the department regard being had to the involvement in crime research had to be given more accentuation and when the DPC found that a person of a different technical experience should not be absorbed or brought in, it cannot be said that the policy decision was applied in a capricious or whimsical manner. It was canvassed by him that the decision taken by the authority of the Respondent No. 2 in not allowing the Petitioner to be absorbed in the department was based on cogent and acceptable reasons and by no stretch of imagination could be regarded as unjust, unfair or arbitrary decision. The learned Counsel would further submit that the Respondent No. 2 was directed by the tribunal on the first round relating to absorption to consider his case within limited parameters and when the said exercise was done with utmost objectivity, the approach of the tribunal, while scrutinizing the order in exercise of judicial review, cannot be found fault with. 8. To appreciate the submissions raised at the bar, it is apposite to refer to the earlier order of the tribunal passed in OA No. 1313/2010:

7. ...The basic issue, however, raised by the Respondents is that the applicant does not have the expertise for the work which is the requirement of the department. A proper procedure was adopted to consider permanent absorption of the applicant. DPC was convened with the recommendations as already referred to above. On a proper application of mind, the Respondent Bureau has not considered it appropriate to permanently absorb the applicant in its organization. The applicant does not have any right of absorption. At the most,

he has a right of being considered. Consideration has been done by the Respondent Bureau, and on cogent grounds, it appears, a decision has been taken not to absorb the applicant. His services may have been useful for the department for the work that was entrusted to him, but since the requirement of the job, for the reasons as mentioned in the additional affidavit, is different and the applicant does not have the requisite expertise therein, the decision has been taken to repatriate him. There cannot be any exception to the order passed by the Respondents. Present may be a case where the court or tribunal may sympathize with the applicant, but in the facts and circumstances of the case, no directions can be issued to the Respondents to absorb the applicant.

8. In totality of the facts and circumstances of the case, at the most, the Respondent NCRB can be asked to consider if the work which was entrusted to the applicant while on deputation is available and he could be accommodated. As in the said work, in any case, the applicant was performing exceedingly well, the Respondents may reconsider his case for absorption. If the Respondents may be of the view that there is no scope whatsoever to accommodate the applicant, and he has to be replaced by a person who may have expertise for the job as required, the applicant may be asked to quit, but, as mentioned above, if the applicant can be accommodate, we would only require the Respondents to consider it sympathetically. The Respondents may take the decision within a month from today, and we would only direct the Respondents not to repatriate the applicant till such time the decision is taken by them.

9. In view of the discussion as made above, we give a limited direction to the Respondent Bureau to consider the case of the applicant for absorption if the work which he is already doing is available with it, and not to repatriate him till such time the decision in that regard is taken. There shall, however, be no order as to costs.

9. From the aforesaid order, it is clear as day that the tribunal on the earlier occasion had already foreclosed the issue of absorption by holding that the Petitioner had no right of absorption but had right to due consideration; that the proper procedure should be adopted to consider the request of the Petitioner for permanent absorption. There cannot be any exception to the order passed by the tribunal. What the tribunal had directed, pertained to a limited direction to consider his case for absorption if the work which he was already doing was available and required by them. As is luminescent, the Respondent NCRB had taken a policy decision to recruit CCTNS with technical expertise in processing and matching finger prints. The Petitioner does not have the said qualification. NCRB has not considered it appropriate to absorb the Petitioner in the nature of work he was performing regard being had to the spectrum of the work and the employees required as per needs and requirements of NCRB.

10. In view of the aforesaid analysis, we do not perceive any error in the order passed by the tribunal and, accordingly, the writ petition, being devoid of merit, stands dismissed without any order as to costs.